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Attorneys for Complainant

**BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

MURAT O. GEMICI, M.D.
1420 Centre Avenue, #1100
Pittsburgh, PA 15219

9170 Charles Street
Omaha, NE 68114

Physician and Surgeon's
Certificate No. A69511

Respondent.

Case No. 10-2002-138718

**DEFAULT DECISION
AND ORDER**

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about August 13, 1999, the Medical Board of California issued Physician and Surgeon's Certificate No. A69511 to MURAT O. GEMICI, M.D., ("Respondent"). This certificate was in full force and effect at all times relevant to the charges alleged in the pending First Amended Accusation. This license is, however, on inactive status at Respondent's request and is currently delinquent for non-payment of bi-annual renewal fees, with an expiration date of May 31, 2003, unless renewed.

2. On or about August 12, 2003, Complainant Ron Joseph, in his official capacity as Executive Director of the Medical Board of California, Department of Consumer

1 Affairs, State of California, caused to be filed against Respondent, before the Division of
2 Medical Quality ("Division"), Accusation No. 10-2002-138718 along with a Statement to
3 Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5,
4 11507.6, and 11507.7. These documents were initially served to Respondent's address of record
5 with the Division, which was 1481 Green Oak Road, Vista, CA 92083, but were returned to the
6 Board undeliverable. These documents were then served by certified mail to a forwarding
7 address of 1420 Centre Avenue, #1100, Pittsburgh, PA 15219 and were signed for by
8 Respondent on 8/22/03. **Exhibit A.** Respondent did not file a Notice of Defense to this
9 Accusation.

10 3. On or about September 12, 2003, Complainant Ron Joseph, in his official
11 capacity as Executive Director of the Medical Board of California, caused to be filed against
12 Respondent, First Amended Accusation No. 10-2002-138718, together with a Supplemental
13 Statement to Respondent. These documents were served by certified mail to Respondent's
14 address of 1420 Centre Avenue, #1100, Pittsburgh, PA 15219 and were signed for by
15 Respondent on 11/24/03. **Exhibit B.** Respondent has not filed a Notice of Defense to this First
16 Amended Accusation.

17 4. Service of the Accusation and First Amended Accusation were effective
18 on 8/22/03 and 11/24/03 respectively as a matter of law, pursuant to Government Code section
19 11505, subdivision (c).

20 5. Since service of the Accusation and First Amended Accusation, and
21 related documents, Respondent has failed to file a Notice of Defense in this action.

22 6. On December 17, 2003, a certified letter was sent to Respondent at his
23 Pennsylvania address of 1420 Centre Avenue, #1100, Pittsburgh, PA 15219. **Exhibit C.** The
24 green certified letter receipt was subsequently returned to the Office of the Attorney General
25 indicating that the letter was accepted by someone identified as Gerald Asper on 1/17/04 at 9170
26 Charles Street, Omaha, Nebraska, 68114. **Exhibit D.**

27 The purpose of this letter was to advise Respondent of the necessity that he
28 complete and return a Notice of Defense in this action, in order to preserve his right to a hearing

1 on the pending charges. Respondent was given until 1/5/04 in order to complete and return a
2 signed Notice of Defense. Respondent was also advised that his failure to return a signed Notice
3 of Defense would result in the filing of a default petition in this action with the likely outcome
4 being that his Physician and Surgeon's certificate would be revoked. Alternatively, included
5 with this letter was also a pleading entitled Stipulated Surrender of Medical License and Order
6 that was provided to allow Respondent the option of surrendering his California medical license
7 in lieu of a disciplinary hearing on the charges pending in the First Amended Accusation.

8 To date, Respondent has not responded to this letter, has not returned a signed
9 Notice of Defense and has not signed and returned the Stipulated Surrender of Medical License
10 and Order.

11 7. Government Code section 11506 states, in pertinent part:

12 "(c) The respondent shall be entitled to a hearing on the merits if the respondent
13 files a notice of defense, and the notice shall be deemed a specific denial of all parts of the
14 accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of
15 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

16 8. Respondent has failed to file a Notice of Defense in this case, despite
17 being advised of his obligation to do so. Therefore, Respondent has waived his right to a hearing
18 on the merits of First Amended Accusation No. 10-2002-138718.

19 9. California Government Code section 11520 states, in pertinent part:

20 "(a) If the respondent either fails to file a notice of defense or to appear at the
21 hearing, the agency may take action based upon the respondent's express admissions or
22 upon other evidence and affidavits may be used as evidence without any notice to
23 respondent."

24 10. Pursuant to its authority under Government Code section 11520, the
25 Division hereby finds Respondent is in default in this case. The Division is therefore permitted,
26 and hereby does, take action in this matter without further hearing. By virtue of this default, the
27 allegations in First Amended Accusation No. 10-2002-138718 are hereby deemed true, together
28 with the evidence contained in Exhibits A, B, C and D appended hereto and incorporated herein.

1 **DETERMINATION OF ISSUES**

2 11. Based on the foregoing findings of fact, Respondent MURAT O. GEMICI,
3 M.D. has subjected his Physician and Surgeon's Certificate, No. A69511 to discipline.

4 12. A copy of the First Amended Accusation, related documents and proofs of
5 service are attached hereto as **Exhibits A, B, C and D**.

6 13. The agency has jurisdiction to adjudicate this case by default.

7 14. The Division of Medical Quality, Medical Board of California, is
8 authorized to revoke Respondent's Physician and Surgeon's Certificate No. A69511 based upon
9 the following violations alleged in the First Amended Accusation:

- 10 a. Business and Professions Code section 2236 - Conviction of a crime;
11 b. Business and Professions Code section 2238 - Violation of state and
12 federal drug statutes;
13 c. Business and Professions Code section 2239 - Unlawful use of drugs;
14 d. Business and Professions Code section 2234(e) - Dishonesty;
15 e. Business and Professions Code section 820 - Mental Illness;
16 f. Business and Professions Code section 2305 - Discipline by another state.

17 **ORDER**

18 Physician and Surgeon's Certificate No. A69511, heretofore issued to Respondent
19 MURAT O. GEMICI, M.D., is hereby revoked.

20 Pursuant to Government Code section 11520, subdivision (c), within seven (7)
21 days after service of this Decision, Respondent may serve a written motion requesting this
22 Decision be vacated and stating the grounds relied upon. On a showing of good cause, the
23 agency may then, in its discretion, vacate this Decision and grant a hearing, as defined by statute.

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1 THIS DECISION SHALL BECOME EFFECTIVE ON APRIL 15, 2004

2 DATED: MARCH 16, 2004

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6 FOR THE DIVISION OF MEDICAL QUALITY
7 MEDICAL BOARD OF CALIFORNIA
8 DEPARTMENT OF CONSUMER AFFAIRS
9 LORIE G. RICE, CHAIR, PANEL A

8 **ATTACHMENTS:**

9 Exhibit A: Accusation No.10-2002-138718 and
10 Related Documents and Declarations of Service

11 Exhibit B: First Amended Accusation No. 10-2002-138718 and
12 Related Documents and Declarations of Service

13 Exhibit C: Certified Letter to Respondent, dated 12/17/03

14 Exhibit D: Certified Mail Receipt Reflecting Delivery of Exhibit C on 1/17/04.
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**BEFORE THE
DIVISION OF MEDICAL QUALITY
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DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 10-2002-138718

MURAT O. GEMICI, M.D.

1481 Green Oak Road
Vista, California 92083

1420 Centre Avenue, #1100
Pittsburg, PA 15219

Physician & Surgeon's
Certificate No. A 69511

Respondent.

**FIRST AMENDED
ACCUSATION**

Complainant alleges, as cause for disciplinary action, the following:

PARTIES

1. Ron Joseph ("Complainant") brings this First Amended Accusation solely in his official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs.

2. Murato Gemici, M.D. ("Respondent"), was issued Physician and Surgeon's Certificate Number A 69511 on or about August 13, 1999 by the Medical Board of California. This license is, however, on inactive status at Respondent's request. The inactive status had an expiration date of May 31, 2003, unless renewed.

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1 shall also notify the clerk of the court in which the action is pending that the
2 defendant is a licensee, and the clerk shall record prominently in the file that the
3 defendant holds a license as a physician and surgeon.

4 “(c) The clerk of the court in which a licensee is convicted of a
5 crime shall, within 48 hours after the conviction, transmit a certified copy of the
6 record of conviction to the board. The division may inquire into the
7 circumstances surrounding the commission of a crime in order to fix the degree of
8 discipline or to determine if the conviction is of an offense substantially related to
9 the qualifications, functions, or duties of a physician and surgeon.

10 “(d) A plea or verdict of guilty or a conviction after a plea of nolo
11 contendere is deemed to be a conviction within the meaning of this section and
12 Section 2236.1. The record of conviction shall be conclusive evidence of the fact
13 that the conviction occurred.”

14 D. Section 2239 of the Code states:

15 “(a) The use or prescribing for or administering to himself or
16 herself, of any controlled substance; or the use of any of the dangerous drugs
17 specified in Section 4022, or of alcoholic beverages, to the extent, or in such a
18 manner as to be dangerous or injurious to the licensee, or to any other person or to
19 the public, or to the extent that such use impairs the ability of the licensee to
20 practice medicine safely or more than one misdemeanor or any felony involving
21 the use, consumption, or self-administration of any of the substances referred to in
22 this section, or any combination thereof, constitutes unprofessional conduct. The
23 record of the conviction is conclusive evidence of such unprofessional conduct.”

24 “(b) A plea or verdict of guilty or a conviction following a plea of
25 nolo contendere is deemed to be a conviction within the meaning of this section.
26 The Division of Medical Quality may order discipline of the licensee in
27 accordance with Section 2227 or the Division of Licensing may order the denial
28 of the license when the time for appeal has elapsed or the judgment of conviction

1 has been affirmed on appeal or when an order granting probation is made
2 suspending imposition of sentence, irrespective of a subsequent order under the
3 provisions of Section 1203.4 of the Penal Code allowing such person to withdraw
4 his or her plea of guilty and to enter a plea of not guilty, or setting aside the
5 verdict of guilty, or dismissing the accusation, complaint, information, or
6 indictment.”

7 E. Section 2238 of the Code states:

8 “A violation of any federal statute or federal regulation or any of the
9 statutes or regulations of this state regulating dangerous drugs or controlled substances
10 constitutes unprofessional conduct.”

11 F. Section 820 of the Code states:

12 “Whenever it appears that any person holding a license, certificate or
13 permit under this division or under any initiative act referred to in this division may be
14 unable to practice his or her profession safely because the licentiate's ability to practice is
15 impaired due to mental illness, or physical illness affecting competency, the licensing
16 agency may order the licentiate to be examined by one or more physicians and surgeons
17 or psychologists designated by the agency. The report of the examiners shall be made
18 available to the licentiate and may be received as direct evidence in proceedings
19 conducted pursuant to Section 822.”

20 G. Section 14124.12 of the Welfare and Institutions Code states, in
21 pertinent part:

22 “(a) Upon receipt of written notice from the Medical Board of
23 California, the Osteopathic Medical Board of California, or the Board of Dental
24 Examiners of California, that a licensee's license has been placed on probation as
25 a result of a disciplinary action, the department may not reimburse any Medi-Cal
26 claim for the type of surgical service or invasive procedure that gave rise to the
27 probation, including any dental surgery or invasive procedure, that was performed
28 by the licensee on or after the effective date of probation and until the termination

1 of all probationary terms and conditions or until the probationary period has
2 ended, whichever occurs first. This section shall apply except in any case in
3 which the relevant licensing board determines that compelling circumstances
4 warrant the continued reimbursement during the probationary period of any Medi-
5 Cal claim, including any claim for dental services, as so described. In such a case,
6 the department shall continue to reimburse the licensee for all procedures, except
7 for those invasive or surgical procedures for which the licensee was placed on
8 probation.”

9 H. Section 125.3 of the Code provides, in pertinent part, that the
10 Board/Registrar/Director may request the administrative law judge to direct a licensee
11 found to have committed a violation or violations of the licensing act to pay a sum not to
12 exceed the reasonable costs of the investigation and enforcement of the case.

13 I. Section 2305 of the Code provides, in pertinent part, that the
14 revocation, suspension, or other discipline, restriction, or limitation imposed by another
15 state upon a license or certificate to practice medicine issued by that state, that would be
16 grounds for discipline in California of a licensee, shall constitute grounds for disciplinary
17 action for unprofessional conduct against the licensee in this state.

18 **FIRST CAUSE FOR DISCIPLINE**

19 (Conviction of a Crime)

20 4. Respondent is subject to disciplinary action under section 2236 of the
21 Code in that, on or about September 26, 2002, following a military General Court Martial,
22 Respondent was convicted of multiple violations of the Uniform Code of Military justice.
23 Respondent admitted the following violations as part of the General Court Martial:

24 A. Respondent improperly worked for Sharps Medical Clinic without
25 first having obtained the permission of his commanding officer.

26 B. Respondent failed to submit timely monthly reports for his off-duty
27 work at the Fallbrook Clinic for September 2001, December 2001, and January 2002.

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1 C. Respondent stole various medical items from the 13 Area Branch
2 Medical Clinic and the Camp Pendleton Naval Hospital.

3 D. On multiple occasions between January 2001, and May 2002,
4 Respondent wrongfully prescribed and possessed Lortab, a schedule III controlled
5 substance, as a result of his prescribing them for Ms. O.M, a patient with whom he was
6 involved from the Fallbrook Clinic, and for whom he would prescribe the medication
7 with the intent of using them himself.

8 **SECOND CAUSE FOR DISCIPLINE**

9 (Violation of Drug Statutes)

10 5. Respondent is further subject to disciplinary action under section 2238 of
11 the Code because Respondent admitted writing prescriptions for patient Ms. O.M. with the intent
12 of using the drugs himself, in violation of Health and Safety Code section 11173.

13 A. Paragraph 12 is incorporated by reference in its entirety as if fully
14 set forth herein.

15 **THIRD CAUSE FOR DISCIPLINE**

16 (Unlawful Use of Drugs)

17 6. Respondent is further subject to disciplinary action under section 2239 of
18 the Code in that he illegally used various drugs and controlled substances including OxyContin,
19 Morphine, Percocet, and Lortab which required he be treated for addiction from June 2002 to
20 August 2002.

21 A. Paragraphs 12 and 13 are incorporated by reference as if fully set
22 forth herein.

23 **FOURTH CAUSE FOR DISCIPLINE**

24 (Dishonesty)

25 7. Respondent is further subject to discipline under section 2234(e) and (f) of
26 the Code in that he committed acts of dishonesty and/or corruption that were substantially related
27 to the qualifications, functions or duties of a physician and surgeon and such acts would have
28 warranted the denial of a physician and surgeon's certificate.

1 A. Paragraph 4 is hereby incorporated by reference as if fully set forth
2 herein.

3 B. Respondent admitted to and was subsequently convicted on or
4 about September 26, 2002, at a military General Court Martial, of stealing various
5 medical items from a medical clinic and the Camp Pendleton Naval Hospital.

6 **FIFTH CAUSE FOR DISCIPLINE**

7 (Mental Illness)

8 8. Respondent is further subject to disciplinary action under section 820 of
9 the Code in that he has a mental condition known as a bipolar disorder which impairs his ability
10 to practice medicine safely. The circumstances are as follows:

11 A. While being treated for addiction in 2002, Respondent was
12 diagnosed with bipolar disorder by Dr. J.M.

13 B. Respondent was treated for this bipolar disorder with medication,
14 at one point taking six different types of drugs including Trazadone, Depakote, and
15 Zyprexa. He is also taking Lexapro for depression.

16 **SIXTH CAUSE FOR DISCIPLINE**

17 (Discipline by Another State)

18 9. Respondent is further subject to disciplinary action under section 2305 of
19 the Code in that his certificate to practice medicine in the state of Nebraska has been revoked.
20 The circumstances are as follows:

21 A. On or about April 28, 2003, the Office of the Attorney General for
22 the state of Nebraska filed a Petition for Disciplinary Action against Respondent with the
23 Nebraska Department of Health and Human Services. This Petition alleged, inter alia, the
24 same or similar conduct alleged herein against Respondent in paragraphs 4-8 infra.

25 B. On or about April 30, 2003, the notice of hearing on the Nebraska
26 charges was served on Respondent by certified mail.

27 C. On or about June 9, 2003, a hearing was held on the Nebraska
28 charges. Respondent was present and represented by counsel at this hearing.

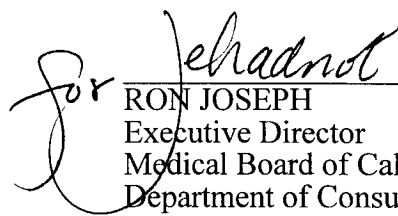
1 D. On or about August 12, 2003, Findings of Fact, Conclusions of
2 Law and an Order were issued by the Nebraska Department of Health and Human
3 Services, Regulation and Licensure Division. In the Order issued, Respondent's license
4 to practice medicine in Nebraska was ordered revoked, effective August 12, 2003.

5 **PRAYER**

6 WHEREFORE, Complainant requests that a hearing be held on the matters herein
7 alleged, and that following the hearing, the Division of Medical Quality issue a decision:

- 8 1. Revoking or suspending Physician's and Surgeon's Certificate Number
9 A 69511, issued to MURAT O. GEMICI, M.D.;
- 10 2. Revoking, suspending or denying approval of MURAT O. GEMICI,
11 M.D.'s authority to supervise physician's assistants, pursuant to section 3527 of the Code;
- 12 3. Ordering MURAT O. GEMICI, M.D. to pay the Division of Medical
13 Quality the reasonable costs of the investigation and enforcement of this case and if placed on
14 probation, the costs of probation monitoring;
- 15 4. Taking such other and further action as deemed necessary and proper.

16 DATED: September 12, 2003

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18 
19 RON JOSEPH
20 Executive Director
21 Medical Board of California
22 Department of Consumer Affairs
23 State of California
24 Complainant
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